

THE MARK O. HATFIELD

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
Vol. IX, No. 17, September 3, 2003

## Announcement

Chief Judge Ancer L. Haggerty advises all federal practitioners that the court has recently moved three chambers within the Mark O. Hatfield Courthouse:

(1) Senior District Judge Robert E. Jones is now located on the 10<sup>th</sup> Floor, Courtroom 10A (North)

(2) District Judge Ann Aiken is now located on the 13<sup>th</sup> Floor, Courtroom 13B (South); and

(3) District Judge Anna J. Brown will remain on the 14<sup>th</sup> Floor, but her Chambers will move to 14A (North).

Chambers phone numbers will remain unchanged. It will take a few weeks for new name plates to be installed. Any questions should be directed to the Clerk's Office (503-326-8008).

## Civil Rights

Judge Robert E. Jones granted a police officer's motion for summary judgment on his defense of qualified immunity against a plaintiff's claims of excessive force during the course of an arrest. Judge Jones held that where there

was no dispute that the plaintiff was properly stopped on suspicion of drunken driving and that the plaintiff attempted to evade arrest following the stop by fleeing on foot, the officer's actions in chasing the plaintiff on foot, pinning him to the ground, forcing his arms back and handcuffing him were all reasonable given the circumstances. Further, because the police officer's action were reasonable, no claim could be stated against the municipality for inadequate training. Saunders v. Bush, CV 01-1133-JO (Opinion, July 30, 2003).

Plaintiff: Pro Se

Defense Counsel:

Michael J. Hansen

## Environment

An environmental group challenged the Forest Service's decision to approve Plans of Operations for seven mining operations and a water diversion project without undertaking the environmental studies required by NEPA. Judge Jelderks vacated some of the challenged

Plans after the Forest Service conceded it had erred. The Forest Service then formally notified the mine operators of the court's action, and of the resulting legal consequences.

The mine operators then filed a second action, seeking a declaration that the judgment in the first action was not binding upon them and they could continue mining under the vacated Plans. Judge Jelderks denied the request, construing it as an impermissible collateral attack upon the judgment in the first action. The court noted the practical problems that would result if a Forest Plan or other agency actions subject to NEPA were deemed valid as to one person but invalid as to another. Once the United States has litigated such matters, the result necessarily must be binding upon all persons, not just upon the United States. The court also noted that the mine operators had known about the original action, yet had made no effort to intervene in that case or to appeal the adverse decision. Aylward v. United States Forest Service, CV 02-214-JE (F&R, July 7, 2003;

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adopted by Judge King on August 3, 2003).

Plaintiffs: Richard Stephens

Defendant: Jeffrey Handy,  
Arno Reifenberg

Defendant-Intervenor:

Elizabeth Mitchell

! In an action filed by a municipality to recover petroleum contamination clean-up costs, Judge Ann Aiken held that the holder of an easement over property is not a “responsible party” that may be liable for remediation costs and hence eligible for contribution relief under O.R.S. 465.257, et seq. Judge Aiken also dismissed a negligence claim based upon the absence of any cognizable duty between the parties. The court denied the motion to dismiss all other claims, noting that the Oregon statute of repose was inapplicable to a public corporation and preempted by CERCLA. City of Lebanon v. Georgia Pacific, CV 02-6351 (Opinion, Aug., 2003).  
Plaintiff’s Counsel: Jay Waldron  
Defense Counsel: Peter Glade

## Discovery

A plaintiff pursuing a sex discrimination action against her current employer filed a motion for a protective order pursuant to Fed. R. Civ. P. 26(c) to limit the disclosure and use of her medical information. Because plaintiff

sought to recover emotional distress damages within her claims for relief, there was no dispute that the medical and health records were relevant and discoverable. However, plaintiff’s claims included allegations that she had been subjected to a hostile environment and, in an affidavit submitted in support of the motion for a protective order, plaintiff explained that she feared that if her personal health information was shared with defendant’s staff members, it could be used for further harassment.

The employer objected to the form of the order and its complete restriction on use outside of the case. Plaintiff was currently on medical leave, and defendant claimed that it needed to use the information for two outside purposes: (1) an administrative worker’s compensation proceeding; and (2) to assess plaintiff’s ability to return to work from medical leave.

Applying the Ninth Circuit recent Foltz decision, Judge Anna J. Brown held that health records are inherently private and amenable to some degree of protection from public disclosure. Judge Brown found that the record was insufficiently

developed to determine whether and how the documents would be used at trial or disposed of following trial, but held that plaintiff had made a prima facie showing of the need for a protective order relative to pre-trial disclosures. However, the court also agreed with the defendant that plaintiff’s proposed form of order needed to be modified to accommodate the defendant’s legitimate needs for disclosure outside the instant litigation. Fischer v. City of Portland, CV 02-1728-BR (Opinion, Aug. 22, 2003).

Plaintiff’s Counsel:

Daniel Snyder

Defense Counsel:

Jennifer Johnston

## Procedure

Judge Ann Aiken granted a motion to amend a complaint and rejected a defense opposition based upon timeliness. The court noted that in the 14 months since the action was filed, defendants had resisted discovery, removed the action to federal court and argued over choice of law. The court held that defendants failed to show prejudice. Rancher v. Childs, CV 03-166-AA (Opinion, Aug. 2003).

Plaintiff’s Counsel:

James L. Buchal

Defense Counsel:

Terrance Lee Hogan